

REMARKS

Claims 1-24 are rejected under 35 USC §101 because the claimed invention is directed to non-statutory subject matter.

As per claims 1-10, based on Supreme Court precedent and recent Federal Circuit decisions, a §101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing.

In this particular case, the method steps are not tied to another statutory class. For example, the first step recites “connecting an author to a content repository”, but fails to identify a class of invention that performs the “connecting”. Therefore, the claimed method is not a patent eligible process under §101.

Applicant has amended the claims accordingly.

As per claims 11-24, the system of claim 11, and all dependent claims thereof, are directed to a network-based system. “System” is commonly used to denote a machine. Here, the claim is not directed to a machine, but rather to a program or code. Network-based applications, programs and code are not statutory subject matter. Alternatively, processes and “computer-executable programs tangibly embodied on a computer readable medium” may be considered statutory subject matter under §101.

Claims 1-24 are rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant's system is a computer system as shown in claim 11. A computer system is a device. The device according to the specification contains a database, the database comprises an author's content. The computer system which obviously is comprised of programs, organizes the content. The computer system also determines fees, aggregates the works, follows a rule system, all of which makes it a computer system or in the alternative, computer executed programs which are embodied in a computer readable medium.

As per claim 1, this claim recites "sending content from said author to said content repository" and then "downloading said content from said author to said collaborator". This claim is indefinite because one of ordinary skill in this art would not understand how the content could be obtained from the author by the collaborator if the author has already sent the content to the repository.

Applicant has amended the claim accordingly.

Additionally, the claim recites "aggregate content". This claim is indefinite because one of ordinary skill in this art could not determine the metes and bounds of the claim term "aggregate content".

Applicant has amended the claim accordingly.

As per claim 11, this claim recites "a data base which allows an author to upload content". This claim is indefinite because one of ordinary skill in the art would not understand how a "data base" could give an author this ability.

Applicant has amended the claim accordingly.

As per claim 13, this claim recites "said reuse methodology describes...." This claim is indefinite because the claim to which it depends, namely claim 11, only claims "reuse methodology" in the alternative. Therefore, one of ordinary skill in the art would not understand the scope of claim 13 if "reuse methodology" were not used in claim 11.

Claim 13 has been cancelled.

As per claim 15 this recites "said work". This term lacks antecedent basis in the claim.

Applicant has amended the claim accordingly.

The Examiner finds that because the claims are indefinite under 35 USC §112, 2nd paragraph, it is impossible to properly construe claim scope at this time. However, in accordance with MPEP §2173.06 and the USPTO's policy of trying to advance prosecution by providing art rejections even though these claims are indefinite, the claims are construed and the prior art is applied as much as practically possible.

Claims Rejections – 35 USC §102

Claims 11-23, as understood by the Examiner, are rejected under 35 USC §102(b) as being anticipated by Stefik et al. (U.S. 5,715,403 A) ("Stefik").

Applicant has amended Claim 11 to include the elements of Claims 15, 17 and 21. Stefik does not teach that the content put on the database is organized by either author, title of content, description of content, or reuse methodology. According to the section cited by the Examiner, digital works are ordered in alphabetical order. This does not state that they are ordered by any of the above. Further, nowhere does Stefik teach that a user can view aggregate works from different authors and integrate these works to create a derivative work. The section cited by the Examiner only refers to modifying a single work. Further, with regards to the system informing the author of use of the content, the Examiner points to a section which states that the Examiner is paid. Even if the author is informed of payment, it does not mean that the author knows how his content was used. This also assists the author in knowing that the proper payment was paid to him. Therefore, Claim 11 and all the dependent claims are allowable over Stefik.

Further, with regards to Claim 16, nowhere does it state that the derivative work can then be put into the system to be used by others.

As per claims 11 and 12, Stefik discloses the following limitations:

g. a data base which allows an author to upload content ("A repository is comprised of..., an external interface for receiving and transmitting data"), (see Figure 1 and associated text);

h. said system organizing said content by author, title of content, description of content or reuse methodology (see column 11, lines 25+);

i. said system comprising information to contact said author ("author name") (see table 1 and associated text).

As per claim 13, Stefik discloses the limitations of claim 11, as described above. Stefik, further discloses the limitations:

j. wherein said reuse methodology describes how content can be used and fees entailed ("usage rights and any associated fees") (see column 6, lines 30+).

As per claim 14, Stefik discloses the limitations of claim 11, as described above. Stefik, further, discloses the limitations:

k. wherein said fee is selected from a flat fee, royalty from direct user, royalty from final end work creator or combination thereof ("associated fees"), (see column 6, lines 30+).

As per claims 15 and 16, Stefik discloses the limitations of claim 14, as described above. Stefik, further, discloses the limitations:

l. wherein a user can aggregate works from different authors, view said aggregate work and integrate said work to create a derivative work ("the requester uses the process to change the contents of the digital work as desired...combine it with other information...taking whatever other steps are useful in creating a derivative work"), (see column 41, lines 1+);

m. wherein said derivative work is put into said system which can be used as a further derivative work (see column 41, lines 1+).

As per claim 17, Stefik discloses the limitations of claim 11, as described above, Stefik, further, discloses the limitations;

n. wherein said system provides logical rules on how to sue said content ("rules concerning access rights") (see at least abstract).

As per claim 18, Stefik discloses the limitations of claim 11, as described above. Stefik, further discloses the limitations:

o. wherein said system provides said author rules to use for said content and said author chooses said rules and sends said rules back to said system (see figure 15, associated text, and column 6, lines 31+).

As per claim 19, Stefik discloses the limitations of claim 18, as described above. Stefik, further disclose the limitations:

p. wherein said rules includes fees ("associated fees"), (see column 6, lines 31+).

As per claim 20, Stefik discloses the limitations of claim 11, as described above. Stefik, further, discloses the limitations:

q. wherein said system determines content contributors ("creator") and royalty allocations ("associated fees"), (see column 6, lines 31+).

As per claim 21, Stefik discloses the limitations of claim 11, as described above. Stefik, further, discloses the limitations:

wherein said system informs said authors of use of said content (inherently done by author receiving fees), (see column 23, lines 50+).

As per claim 22, Stefik discloses the limitations of claim 11, as described above. Stefik, further, discloses the limitations:

s. wherein said system logs activity of users and determines royalty allocation for said authors (see column 23, lines 50+).

As per claim 23, Stefik discloses the limitations of claim 11, as described above, Stefik, further, discloses the limitations:

t. wherein said system bills users periodically ("the billing module may... periodically communicate billing data to a central billing facility, whereupon the user may be billed"), (see column 3, lines 20+).

Claim Rejections – 35 USC §103

Claims 1-10, 16 and 24, as understood by the Examiner, are rejected under 35 USC §103(a) as being unpatentable over Stefik et al. (US 5,715,403 A) ("Stefik"), in view of Schneck et al. (US 2003/0163428 A1) ("Schneck").

As per claim 1, Stefik discloses a method for creating derivative works (see column 40, line 53, through column 41, line 44). Additionally, Stefik discloses the following limitations:

u. connecting an author to a content repository (see figure 1 and associated text);

v. sending meta data from said author to said content repository (see figure 1, table 1, and associated text);

w. sending content from said author to said content repository (see figure 1 and associated text);

x. connecting a final uploader to said content repository (see figure 1 and associated text);

y. uploading aggregate content and meta data from said final uploader to said content repository (see figure 1 and associated text).

Stefik does not specifically disclose the following limitations:

z. connecting a collaborator to said content repository; and
downloading said content from said author to said collaborator from said content repository.

Schneck, however, does disclose the following limitations:

aa. connecting a collaborator to said content repository (see figure 15 and associated text);

bb. downloading said content from said author to said collaborator from said content repository (see figure 15 and associated text).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to include in the system of Stefik the collaborator as taught by Schneck since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Applicant has amended Claim 1 to add the elements of Claims 2, 3 and 4. As stated above, neither Stefik nor Schneck, alone or in combination teach

notifying contributors regarding use of their content, nor does it track what content user accesses. All the above references teach is sending remuneration to the author for use of their content. According to these references, the author will never know how or what content is used, only that they were paid for the use. Knowledge of the use is important to the user so that they can verify that the correct payments have been made and that the correct users have gotten access to the information. Therefore, Claim 1 and the claims dependent on it are not obvious over the prior art references.

As per claim 2, Stefik/Schneck discloses the limitations of claim 1, as described above. Stefik/Schneck, further, discloses the limitations:

cc. determining content contributors ("creator") and royalty allocations ("associated fees"), (see Stefik: col. 6, lines 62+).

As per claim 3, Stefik/Schneck discloses the limitations of claim 1, as described above. Stefik/Schneck, further, discloses the limitations:

dd. notifying all contributors regarding use of said content ("the server generates a transaction identifier that is used in records or reports of the transaction"), (see Stefik: column 31, lines 6+).

As per claim 4, Stefik/Schneck discloses the limitations of claim 1, as described above. Stefik/Scheck, further, discloses the limitations:

ee. tracking what content a user accesses ("the display/execution repository 411 is further coupled to a credit server 414 to report any fees to be billed for access to a digital work"), (see figure 4b and associated text).

As per claim 5, Stefik/Schneck discloses the limitations of claim 1, as described above. Stefik/Schneck, further, discloses the limitations:

ff. collection subscription fees for said author from a user and logging activity of said user to determine royalty allocation (see Stefik: col. 23, lines 50+).

As per claim 6, Stefik/Schneck discloses the limitations of claim 2, as described above. Stefik/Schneck, further, discloses the limitations:

gg. billing all users on a periodic basis based on the use ("the billing module may...periodically communicate billing data to a central billing facility, whereupon the user may be billed"), (see Stefik: col. 3, lines 25+).

As per claim 7, Stefik/Schneck discloses the limitations of claim 2, as described above. Stefik/Schneck, further, discloses the limitations:

hh. determining periodically royalties owned to each author and disbursing funds, (see Stefik: col. 3, lines 25+).

As per claim 8, Stefik/Schneck discloses the limitations of claim 2, as described above. Stefik/Schneck further, discloses the limitations:

ii. calculating said royalties based on usage of each authors works ("usage rights and any associated fees assigned by a creator"), (see Stefik: col. 6, lines 31+).

As per claim 9, Stefik/Schneck discloses the limitations of claim 2, as described above. Stefik/Schneck, further, discloses the limitations:

jj. determining an algorithm to allocate royalties ("algorithm"), (see Stefik: col. 46, lines 1+).

As per claim 10, Stefik/Schneck discloses the limitations of claim 9, as described above. Stefik/Schneck, further, discloses the limitations:

kk. wherein said algorithm varies based on type of content being sold (see Stefik: col. 46, lines 1+).

As per claim 24, Stefik discloses the limitations of claim 11, as described above. Stefik does not specifically disclose the following limitations:

ll. wherein said system checks for duplicate content, if duplicate content is found said system does not post said duplicate content.

Schneck, however, does disclose the limitations:

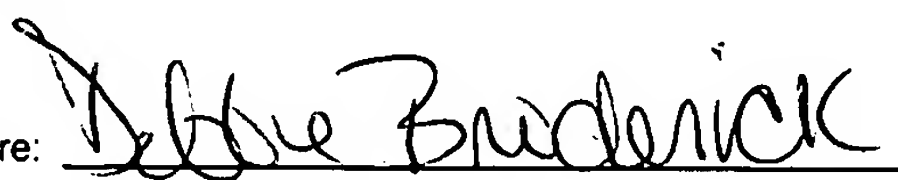
mm. wherein said system checks for duplicate content, if duplicate content is found said system does not post said duplicate content (see table 1, and associated text).

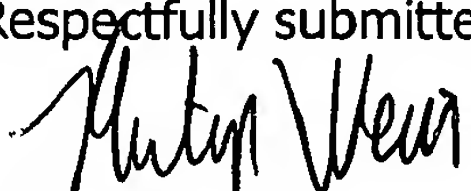
Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to include in the system of Stefik the integrity check as taught by Schneck since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

In reviewing Table 1 and the associated text, nowhere does it indicate anywhere that the system checks for duplicate content. Therefore, Claim 24 is not obvious over the prior art.

Applicant believes that the application is now in condition for allowance.

"EXPRESS MAIL" Mailing Label No. EM 220085147 US
Date of Deposit: January 21, 2009
I hereby certify that this paper (and any document(s) attached herewith
Is being deposited with the United States Postal Service "Express Mail
Post Office to Addressee" service under 37 C.F.R. 1.10 on the
date indicated above and is addressed to the Commissioner
for Patents, P.O. Box 1450, Alexandria, VA 22313 on January 21, 2009

Signature: 
Name: Debbie Broderick
PMW:db

Respectfully submitted,

Philip M. Weiss
Reg. No. 34,751
Attorney for Applicant
Weiss & Weiss
300 Old Country Rd., Ste. 251
Mineola, NY 11501
(516) 739-1500